

§ 519.6 Terms and conditions of employment under full-time student certificates and under temporary authorization.

(a) A full-time student certificate will not be issued for a period longer than 1 year, nor will it be issued retroactively. It shall specify its effective and expiration dates. A copy of the certificate shall be posted during its effective period in a conspicuous place or places in the establishment or at the farm readily visible to all employees, for example, adjacent to the time clock or on the bulletin board used for notices to the employees. If temporary authorization is in effect under paragraph (a) of § 519.4 of this subpart, a notice thereof shall be similarly posted during the effective period of such authorization.

(b) Full-time students may not be employed under a certificate at less than 85 percent of the minimum wage applicable under section 6 of the Act.

(c) For retail or service establishment employers or agricultural employers, the allowable extent of full-time student employment under certificates varies depending on whether: (1) The employer proposes to employ no more than six full-time students at subminimum wages on any workday, (2) the applicant requests authority for not more than 10 percent of the total hours of all employees during any month, or (3) the applicant requests authority for more than 10 percent of the total hours during any month. (For agricultural employers, the month of full-time student certificated employment may vary somewhat from the month in a previous year on which the certificate is based, depending on seasonal factors.)

(d) *Retail or service establishment employers or agricultural employers requesting authorization to employ not more than six full-time students at subminimum wages on any workday.* An application from such an applicant provides temporary authorization for the employment of full-time students at subminimum wages: *Provided*, The conditions set forth in paragraph (a) of § 519.4 of this subpart are met. Upon review of the application by the Administration or his/her authorized representative,

the extent of the temporary authority may be modified.

(e) *Applicants requesting authorization for not more than 10 percent of the total hours of all employees during any month.* For such an applicant, certificates may authorize the employment of full-time student at subminimum wages for up to 10 percent of the total hours of all employees during any month, regardless of past practice of employing students. (Note: An establishment which has not previously held a certificate may be authorized 10 percent of the total hours of all employees during any month. Applicants requesting authority under this paragraph need not refer to paragraphs (f), (g), or (h) of this section.)

(f) *Applicants requesting authorization for more than 10 percent of the total monthly hours of all employees during any month with records of hours of employment of students and coverage by the Act prior to May 1974.* For such an applicant, certificates may not authorize full-time student employment at subminimum wages in excess of the highest ratio under any of these three formulas: (1) The proportion of student hours of employment (*i.e.*, of full-time students under certificates) to total hours of all employees for the corresponding month of the preceding twelve-month period; (2) the maximum proportion of student hours of employment to total hours of all employees (in any corresponding month), applicable to the issuance of full-time student certificates before May 1974; or (3) 10 percent of the total hours of all employees, during any month. (Note: An establishment which is entitled to monthly allowances ranging from 5 to 20 percent may be authorized 10 percent for those months which were less than 10 percent and retain the higher allowances for those months above 10 percent.)

(g) *Applicants requesting authorization for more than 10 percent of the total hours of all employees during any month with records of hours of employment of students and new coverage under the 1974 Amendments.* For such an applicant, the highest permissible allowance under a certificate during any month is the highest ratio under any of these three formulas: (1) The proportion of hours of

employment of full-time students to total hours of all employees during the corresponding month from May 1973 through April 1974; (2) the proportion of student hours of employment (*i.e.*, of hours of full-time students under certificates) to total hours of all employees during the corresponding month of the preceding twelve-month period (an alternative which is not applicable to all months of the year until 12 months after May 1, 1974); or (3) 10 percent of the total hours of all employees, during any month. (See notes under paragraphs (e) and (f) of this section.)

(h) *Applicants requesting authorization for more than 10 percent of the total hours of all employees during any month without records of student hours worked.* For such an applicant, the permissible proportion under certificate of full-time student hours at subminimum wages to total hours of all employees is based on the "practice" during the preceding twelve-month period of: (1) Similar establishments of the same employer in the same general metropolitan areas in which such establishment is located; (2) similar establishments in the same or nearby communities if such establishment is not in a metropolitan area; or (3) other establishments of the same general character operating in the community or the nearest comparable community. ("Practice" means either the certificate allowances or the proportion between the actual student hours of employment to the total hours of all employees.)

(i) An overestimate of total hours of employment of all employees for a current month resulting in the employment of the full-time students in excess of the hours authorized in paragraph (e), (f), (g), or (h) of this section may be corrected by compensating them for the difference between the subminimum wages actually paid and the applicable minimum under section 6 of the Act for the excess hours. Similarly, if an agricultural employer or a retail or service establishment employer has authorization to employ no more than six full-time students at subminimum wages on any workday but exceeds that number, the excess may be corrected by compensating the additional full-time students for the difference between the subminimum

wages actually paid and the applicable minimum under section 6 of the Act. This additional compensation shall be paid on the regular payday next after the end of the period.

(j) Full-time students shall not be permitted to work at subminimum wages for more than 8 hours a day, nor for more than 40 hours a week when school is not in session, nor more than 20 hours a week when school is in session (apart from a full-time student's summer vacation), except that when a full-day school holiday occurs on a day when the establishment is open for business, the weekly limitation on the maximum number of hours which may be worked shall be increased by 8 hours for each such holiday but in no event shall the 40-hour limitation be exceeded. (Note: School is considered to be in session for a student attending summer school.) Whenever a full-time student is employed for more than 20 hours in any workweek in conformance with this paragraph, the employer shall note in his/her payroll records that school was not in session during all or part of that workweek or the student was in his/her summer vacation.

(k) Neither oppressive child labor as defined in section 3(1) of the Act and regulations issued under the Act nor any other employment in violation of a Federal, State or local child labor law or ordinance shall come within the terms of any certificate issued under this subpart.

(l) Full-time students shall be employed at subminimum wages under this subpart only outside of their school hours, *i.e.*, only outside of the scheduled hours of instruction of the individual student, or, in the case of agriculture, only outside of school hours for the school district where the employee is living while so employed, if the employee is under 16 years of age.

(m) No full-time student shall be hired under a full-time student certificate while abnormal labor conditions, such as a strike or lockout, exist at the establishment or farm.

(n) No provision of any full-time student certificate shall excuse non-compliance with higher standards applicable to full-time students which may be established under the Walsh-

§ 519.7

Healey Public Contracts Act or any other Federal law, State law, local ordinance, or union or other agreement. Thus, certificates issued under this law have no application to employment under the Service Contract Act.

(o) No full-time student certificate shall apply to any employee to whom a certificate issued under section 14 (a) or (c) of the Act has application.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975, as amended at 42 FR 58745, Nov. 11, 1977]

§ 519.7 Records to be kept.

(a) The employer shall designate each worker employed as a full-time student under a full-time student certificate at subminimum wages, as provided under part 516 of this chapter.

(b)(1) In addition to the records required under part 516 of this chapter and this subpart, the employer shall keep the records specified in paragraph (b) (2) and (3) of this section specifically relating to full-time students employed at subminimum wages.

(2) The employer shall obtain at the time of hiring and keep in his records information from the school attended that the employee receives primarily daytime instruction at the physical location of the school in accordance with the school's accepted definition of a full-time student. During a period between attendance at different schools not longer than the usual summer vacation, a certificate from the school next to be attended that the student has been accepted as a full-time student will satisfy the requirements of this paragraph (b)(2).

(3) The employer operating any farm or retail or service establishment shall maintain records of the monthly hours of employment of full-time students at subminimum wages and of the total hours of employment during the month of all employees in the establishment except for those employed in agriculture who come within one of the other exemptions from the minimum wage provisions of the Act.

(c) The records required in this section, including a copy of any full-time student certificate issued, shall be kept for a period of 3 years at the place and

29 CFR Ch. V (7-1-97 Edition)

made available for inspection, both as provided in part 516 of this chapter.

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§ 519.8 Amendment or replacement of a full-time student certificate.

In the absence of an objection by the employer (which may be resolved in the manner provided in part 528 of this chapter), the authorized officer upon his/her own motion may amend the provisions of a certificate when it is necessary by reason of the amendment of these regulations, or may withdraw a certificate and issue a replacement certificate when necessary to correct omissions or apparent defects in the original certificate.

§ 519.9 Reconsideration and review.

(a) Within 15 days after being informed of a denial of an application for a full-time student certificate or within 45 days after FEDERAL REGISTER publication of a statement of the terms of the certificate granted (subsequent to April 30, 1976, within 60 days after a certificate is granted), any person aggrieved by the action of an authorized officer in denying or granting a certificate may: (1) File a written request for reconsideration thereof by the authorized officer who made the decision in the first instance, or (2) file with the Administrator a written request for review.

(b) A request for reconsideration shall be accompanied by a statement of the additional evidence which the applicant believes may materially affect the decision and a showing that there were reasonable grounds for failure to present such evidence in the original proceedings.

(c) Any person aggrieved by the reconsideration determination of an authorized officer may, within 15 days after such determination, file with the Administrator a written request for review.

(d) A request for review shall be granted where reasonable grounds for the review are set forth in the request.

(e) If a request for reconsideration or review is granted, the authorized officer or the Administrator may, to the